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January 6, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Correction to Additional Comments of AT&T Wireless Services, Inc. filed in  
DA 97-2558, CC Docket No. 94-54 (automatic roaming)

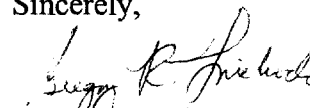
Dear Secretary Salas:

AT&T Wireless Services, Inc. filed yesterday the enclosed Additional Comments ("AT&T Additional Comments") in response to the Commission's Public Notice seeking additional comment on automatic roaming proposals in CC Docket No. 94-54.<sup>1/</sup> We inadvertently labeled the first page of the AT&T Additional Comments with the wrong "DA" number, which should have read "DA 97-2558."

We would appreciate it if you would substitute the enclosed corrected page for the first page of the AT&T Additional Comments. Five copies of the corrected first page are enclosed.

Thank you for your assistance in this matter. Please contact the undersigned with any questions.

Sincerely,

  
Gregory R. Firehock

Enclosures

cc: International Transcription Services (w/encl.)

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<sup>1/</sup> Public Notice, "Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, CC Docket No. 94-54," DA 97-2558 (rel. Dec. 5, 1997).

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**Federal Communications Commission  
Office of Secretary**

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	DA 97-2558
Pertaining to Local Exchange Carrier	)	
Provision of Commercial Mobile Radio	)	
Services	)	

**ADDITIONAL COMMENTS OF AT&T WIRELESS SERVICES, INC.**

**AT&T WIRELESS SERVICES, INC.**

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

94-54  
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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	DA 97-2309
Pertaining to Local Exchange Carrier	)	
Provision of Commercial Mobile Radio	)	
Services	)	

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Services )

**ADDITIONAL COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits additional comments pursuant to the Commission's Public Notice in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

For the reasons set forth below, the Commission should adopt a limited automatic roaming requirement that mirrors its existing Commercial Mobile Radio Services ("CMRS") resale rule.<sup>2/</sup> This rule should require all CMRS providers to offer automatic roaming to other CMRS providers that have equipped their customers with technically compatible handsets. The automatic roaming requirement should sunset five years after the award of the last group of initial licenses to provide Personal Communications Services ("PCS"). AT&T's own experience demonstrates that absent such a requirement, a significant number of incumbent cellular carriers will refuse to negotiate automatic roaming arrangements with new PCS entrants in an effort to hamper the entry of additional competitors in their markets. In contrast, adoption

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<sup>1/</sup> Public Notice, "Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks," DA 97-2558 (rel. Dec. 5, 1997) ("Notice").

<sup>2/</sup> 47 C.F.R. § 20.12(b).

of the rule will jump start wireless competition by mitigating the ten-year headstart enjoyed by cellular incumbents. Ultimately, by offering a realistic choice among carriers, the rule will benefit consumers and the public interest.

## DISCUSSION

In its initial submissions in response to the Third Notice of Proposed Rulemaking in this docket,<sup>3/</sup> AT&T argued that the wireless marketplace was sufficiently competitive to ensure that CMRS providers would be able to enter into automatic roaming arrangements on commercially reasonable and nondiscriminatory terms. At that time, AT&T relied on its experience as an incumbent cellular carrier in successfully negotiating automatic roaming arrangements with virtually every other cellular carrier in the country as evidence that no rule was necessary to promote automatic roaming agreements for PCS.<sup>4/</sup> The Commission now asks parties to update the record on any developments since the Third Notice reply comment period closed regarding, among other things, the ability of CMRS providers to enter into roaming agreements. AT&T's attempts during the last two years to obtain in-market automatic roaming agreements for its 21 A and B block PCS markets have led it to conclude -- albeit reluctantly -- that a limited automatic roaming rule is necessary.

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<sup>3/</sup> In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996). ("Third Notice")

<sup>4/</sup> In general, automatic roaming allows customers to receive and place calls outside their home area without the intervention of an operator seeking credit card information. Automatic roaming increases customers' phone use when they are traveling, thus generating airtime revenue for both the home and the visited markets. Manual or credit card roaming, on the other hand, is a cumbersome process that discourages phone use. Manual roaming is all that is required under the FCC's current CMRS rules. See id., 11 FCC Rcd at 9472 ¶ 16.

## **I. MANY INCUMBENT CARRIERS REFUSE AUTOMATIC ROAMING TO PCS CARRIERS**

In markets where it has launched PCS, AT&T has supplied its customers with dual mode/dual band handsets<sup>5/</sup> that will allow customers to move seamlessly from AT&T's digital PCS systems to the analog or digital systems of cellular carriers when the customer moves out of range of AT&T's cell sites within his home market or travels outside of his home market to a non-AT&T system. These handsets are intended to allow AT&T's new PCS customers to obtain coverage anywhere in the country, including in-market locations where AT&T has not yet completed the build-out of its PCS network.<sup>6/</sup>

AT&T is among the first PCS carriers to provide customers with dual mode/dual band handsets. Consequently, it is also among the first to seek automatic roaming agreements for its PCS customers and to experience the intransigence of a significant number of incumbent cellular carriers on this issue.<sup>7/</sup> As a dual/mode, dual/band solution is selected by more PCS providers, however, other PCS carriers are also likely to encounter this problem.

As outlined in the May 13 Letter, AT&T's PCS affiliate has been denied in-market automatic roaming agreements by a group of incumbent cellular carriers including AirTouch

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<sup>5/</sup> "Dual mode" refers to the handset's capability of switching from digital mode to analog mode. "Dual band" refers to the handset's capability of switching from the 1900 MHz PCS band to the 900 MHz cellular band.

<sup>6/</sup> AT&T has made significant investments in the development and manufacture of dual mode/dual band handsets to enable automatic in-market roaming. Incumbents' unreasonable refusal to provide automatic roaming deprives the public of the substantial benefit that the availability of these handsets would otherwise make possible.

<sup>7/</sup> Ex Parte Letter from Cathleen A. Massey, Vice President, External Affairs, AT&T Wireless Services Inc., to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 1 (May 13, 1997) ("May 13 Letter").

Communications, Inc. ("AirTouch"), Ameritech, Bell Atlantic Mobile, Inc., BellSouth, and others.<sup>8/</sup> Thus, when AT&T launched service in its Atlanta MTA last year, it was not able to offer extended area in-market service because neither AirTouch nor BellSouth would enter into an in-market roaming agreement. Other carriers have agreed to consider in-market automatic roaming, but only at excessively high rates. It is apparent to AT&T that these cellular carriers are willing to forgo roaming revenue for the sole purpose of impeding the entry of a new PCS competitor in their markets.<sup>9/</sup> Clearly, these incumbent cellular providers believe their long-term economic interest is served by delaying entry of new competitors in their markets. Because this economic interest is at odds with the Commission's policy of promoting CMRS competition, a limited automatic, in-market roaming rule is necessary.<sup>10/</sup>

In the Notice, the Commission appears especially concerned about the ability of smaller (C, D, E and F block) licensees to obtain roaming agreements.<sup>11/</sup> AT&T submits that if AT&T is

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<sup>8/</sup> Not only does AirTouch refuse to allow in-market roaming at any rate, it will only allow AT&T's out-of-market PCS subscribers to roam at the prohibitive price of \$3.00 a day and \$1.00 a minute. Ameritech refuses to allow any PCS subscribers to roam on its cellular systems, in-market or out-of-market.

<sup>9/</sup> May 13 Letter at 1.

<sup>10/</sup> AT&T strongly disagrees with the automatic roaming proposal of the Alliance of Independent Wireless Operators (the "Alliance"), which would guarantee a share of roaming revenues from "foreign subscribers who travel into [CMRS providers'] markets." See Comments of the Alliance of Independent Wireless Operators, CC Docket No. 94-54 (Oct. 4, 1996), at 5. As AT&T has noted, the Alliance's proposal would vest in roamed-on ("host") providers an unprecedented entitlement to revenues, leading to the proliferation of "roaming traps" and increased customer prices for service. Reply Comments of AT&T Wireless Services, Inc., CC Docket No. 94-54 (Nov. 22, 1997), at 3-4. The Alliance has incorrectly interpreted AT&T's support for automatic roaming rule as an endorsement of its proposal. See Letter from J. K. Hage, III, Counsel for the Alliance of Independent Wireless Operators, to William F. Caton, Acting Secretary, Federal Communications Commission (August 15, 1997).

<sup>11/</sup> Notice at 2.



unable to negotiate a reasonable arrangement with incumbent cellular providers, small PCS providers have very little chance of entering into in-market automatic roaming agreements. Unlike smaller providers and carriers without an existing customer base, AT&T negotiates roaming agreements collectively on behalf of its substantial existing cellular customer base and its new PCS markets. Similarly, unlike new entrants, AT&T can offer carriers the substantial benefit of roaming on AT&T's nationwide cellular network.<sup>12/</sup> Yet, for all of the benefits AT&T can offer incumbent providers, AT&T has still encountered resistance in its efforts to secure in-market roaming agreements.

## **II. AVAILABILITY OF IN-MARKET RESALE IS AN INSUFFICIENT SOLUTION**

When the Commission first adopted its cellular resale rule in 1981, it decided that the head start enjoyed by wireline cellular carriers required the adoption of a in-market resale requirement for a limited period of time.<sup>13/</sup> Similarly, the Commission has extended the CMRS resale rule to facilities-based competitors for five years. Adoption of a rule requiring the provision of in-market automatic roaming was never considered because it was only with the

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<sup>12/</sup> When Bell Atlantic Mobile's ("BAM's") wholly-owned cellular subsidiary, SouthwestCo., refused to allow in-market roaming in its Phoenix market, AT&T terminated out-of-market automatic roaming for all of the customers from BAM's Phoenix market. The dispute, which lead to a lawsuit, was eventually settled, but not before both AT&T's and BAM's customers were affected.

<sup>13/</sup> See In the Matter of Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006, 4007 ¶¶ 7, 11 (1992); see also In the Matter of an Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relating to Cellular Communications Systems, CC Docket No. 79-318, 86 F.C.C. 2d 469, 510-11 ¶¶ 103-107 (1981).

advent of recent technological advances that automatic roaming provided a viable alternative to in-market resale for carriers still constructing their systems<sup>14/</sup>

For both AT&T and smaller PCS providers,<sup>15/</sup> in-market automatic roaming is an essential competitive tool during the period before their new networks are fully built-out. Given the technological advances in the marketplace, it is not sufficient, as some incumbent cellular carriers have argued, for PCS providers to rely on in-market resale arrangements with the incumbent as they construct their networks. In-market resale alone does not provide the PCS customer with the seamless and feature-rich service that wireless customers now expect as the industry standard.<sup>16/</sup> To the contrary, the PCS operator relying on in-market resale to provide extended area service would need to assign each of its customers a second phone number in order to utilize the incumbent's system on a resale basis. Customers would then have to reprogram manually their number each time they move between the PCS provider's coverage area and the incumbent's territory where the PCS provider is a reseller. In addition to being unduly cumbersome, this arrangement also deprives customers of the ability to receive calls reliably

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<sup>14/</sup> The industry's development of the IS-41, Rev. A standard in 1991 permitted carriers to deliver calls to customers traveling outside their home areas. It was only with this development that roaming customers could both make and receive calls, thereby blending the customer friendly aspects of automatic roaming with the full functionality of resale. Likewise, the development of dual/mode, dual/band handsets last year enabled carriers to overcome the deployment of various technologies within a single market that was the last roadblock to utilizing automatic roaming as a substitute for resale.

<sup>15/</sup> See, Ex parte letter from Kimberly D. Wheeler, Esq., Gurman Blask & Freeman, on behalf of Western Wireless Corporation, to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (May 30, 1997).

<sup>16/</sup> Ironically, cellular incumbents typically charge other carriers less to act as resellers than they do for automatic roaming. This underscores the anticompetitive nature of some incumbents' decisions to forgo additional revenue in order to relegate other in-market providers to a less customer-friendly solution.

because their mobile identification number will vary depending on whether they are on the PCS system or resale customers on the incumbent cellular system.

### **III. INCUMBENT OPPOSITION TO IN-MARKET ROAMING IS NOT BASED UPON LEGITIMATE TECHNICAL CONCERNS**

As a large incumbent cellular carrier, AT&T is familiar with the arguments that opponents to a limited automatic roaming rule are likely to proffer to the Commission. AT&T is also in a position to explain why each of these arguments fails to outweigh the benefits of requiring automatic roaming for a limited time period. First, incumbents claim that an in-market automatic roaming rule will force them to spend capital on excess analog capacity that will be stranded when PCS providers migrate customers to their own facilities as they complete their build-out. The Commission's rules, however, already require incumbents to provide resale capacity to their facilities-based competitors for five years. Creating a mirror image of this rule for automatic roaming does not add to incumbent carriers' existing obligation to honor other facilities-based carriers' resale requests.

In addition, PCS providers and other incoming market entrants build out the most populated portions of their markets first. Thus, reliance on the incumbent's facilities for in-market automatic roaming will occur in less populated portions of the market where preexisting capacity is likely to be available. Indeed, the speciousness of this "stranded capacity" argument is highlighted when one considers the position of an incumbent carrier such as Bell Atlantic, which is willing to sign an automatic roaming contract for AT&T's entire out-of-market PCS subscriber base -- which would roam on AT&T's system once it is fully constructed -- while refusing to consider in-market automatic roaming. Unlike in-market roamers, out-of-market roamers are likely to be business travelers concentrated in populated portions of the incumbent's

market where capacity constraints are most likely to occur. The calculation that results in this differing attitude is clear. Denying in-market automatic roaming is the incumbent's attempt to shield its customer base from competition. Accommodating out-of-market roamers, however, provides the incumbent with a valuable revenue stream that does not have the externality -- undesired by the cellular incumbent -- of promoting in-market competition.

Second, in apparent contradiction to the "stranded capacity" argument above, incumbent carriers claim that an automatic roaming rule will allow PCS providers to piggyback indefinitely on the incumbent carriers' facilities. This claim ignores several factors. First, PCS carriers are required to meet the Commission's five-year and ten-year build out requirements as a condition of retaining their licenses.<sup>17/</sup> Next, as discussed below, the Commission can address this concern by providing that any automatic roaming requirement that it adopts sunsets in five years. By including a five-year sunset, the Commission will address any concern that an open-ended automatic roaming rule would discourage build-out of less populated portions of a PCS provider's market.

In addition, the simple economics of roaming substantially undercut the viability of a "freeloading" strategy because carriers typically charge each other substantially more for each roamer minute than the cost of providing the underlying airtime. For example, AT&T has an in-market roaming arrangement in its Washington-Baltimore PCS market with Southwestern Bell Mobility Systems ("SBMS"). Each time an AT&T subscriber roams onto SBMS's system, however, AT&T has to pay SBMS roamer charges that amount to a substantial portion of the per minute revenue collected for the call. In some cases, AT&T may even pay SBMS more for the

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<sup>17/</sup> 47 C.F.R. § 24.203.

call than it bills the subscriber. Under these circumstances, AT&T has every incentive to bring its per minute costs down by building its own facilities so that it does not continue to line the pockets of its competitor.

Finally, the Commission asks for comment on whether its proposal to mandate automatic roaming is consistent with its CMRS number portability requirements.<sup>18/</sup> Although, as described above, some incumbent cellular operators have refused to enter into automatic roaming arrangements with PCS providers, there exists today a nearly ubiquitous system of automatic roaming among cellular carriers throughout the United States. It also is the case that accommodating automatic roaming by CMRS customers with ported numbers will be a difficult technical challenge for the industry as it implements number portability. Because automatic roaming already exists, however, the technical difficulties associated with roaming and number portability will have to be resolved in any case and will not be exacerbated by any action the Commission takes in this proceeding to mandate in-market automatic roaming.

#### **IV. ADOPTION OF A LIMITED IN-MARKET AUTOMATIC ROAMING REQUIREMENT WILL PROMOTE COMPETITION**

The failure to mandate in-market automatic roaming for a limited period of time will substantially impede new PCS competition to the benefit of incumbent cellular providers. In 1981, the Commission determined that the relatively short headstart enjoyed by wireline cellular providers over their non-wireline competitors was sufficient justification for adopting an in-market resale requirement.<sup>19/</sup> Given that cellular providers had been operating for ten years

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<sup>18/</sup> Notice at 2.

<sup>19/</sup> See supra n.13.

before PCS was even licensed, an in-market automatic roaming requirement is essential to mitigate the considerable advantages of incumbency.

AT&T notes that, as the country's largest incumbent cellular provider, it too would be required to permit in-market automatic roaming on its systems by PCS competitors.<sup>20/</sup> Some of these competitors are very large, have name-brand recognition, and promise to be formidable competitors. AT&T would prefer, however, to compete on an even playing field in both its PCS and cellular markets, rather than allow other incumbents to lock out new entrants.

The Commission, therefore, should adopt an automatic roaming mandate that mirrors the existing CMRS resale rule.<sup>21/</sup> Under such a rule, upon request, CMRS providers would be required to provide automatic roaming to all other CMRS providers' customers with technically compatible handsets for a period of five years from the date the last group of initial licensees for broadband PCS spectrum is awarded. And, as under the existing CMRS resale rule, CMRS providers would be required to allow the customers of other facilities-based competitors to roam in-market if they have technically compatible handsets. For these purposes, cellular, PCS and covered SMR providers should all be considered each other's competitors. The Commission should also make it clear that charging higher rates for in-market roaming than out-of-market roaming is impermissible discrimination, unless such higher charges are reasonably based on factors other than the roaming carrier's identity as a competitor.<sup>22/</sup> Without this guidance,

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<sup>20/</sup> As an incumbent cellular carrier, AT&T has entered into in-market automatic roaming arrangements with several PCS providers that have provided their customers with handsets that are technically compatible with AT&T's systems.

<sup>21/</sup> May 13 Letter at 2.

<sup>22/</sup> Such unreasonable discrimination would be prohibited by section 202(a) of the Communications Act. 47 U.S.C. § 202(a).

AT&T and other PCS providers will be forced to file time-consuming and expensive formal complaints to stop overt discriminatory treatment of PCS roamers by incumbent cellular carriers.

### CONCLUSION

For the foregoing reasons, the Commission should mandate automatic roaming, including in-market automatic roaming, between cellular, broadband PCS, and covered SMR carriers for a period of five years.

Respectfully submitted,

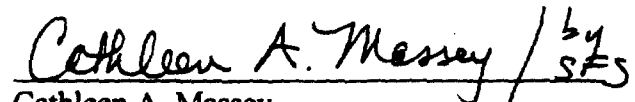
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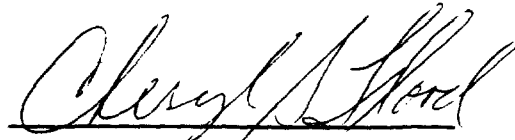
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### **CERTIFICATE OF SERVICE**

I, Cheryl Flood, hereby certify that on this 5<sup>th</sup> day of January, 1998, I caused copies of the foregoing **"ADDITIONAL COMMENTS OF AT&T WIRELESS SERVICES, INC."** to be sent by messenger (\*) to the following:



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